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No. 94-885

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

SIDNEY J. BROWN, *et al.*,
Petitioners,

v.

RESOLUTION TRUST CORPORATION,
Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

I. INTRODUCTION

Respondent's Brief in Opposition ("Respondent's Brief") does not dispute the legal significance of this case or the grounds for review by this Court. Respondent's Brief does, however, distort material facts and mischaracterize the basis of Petitioners' (hereinafter "Brown") claims in a blatant attempt to prejudice this Court against Brown's Petition and to mask the important questions of first impression which should be reviewed and settled by this Court.

II. RESPONDENT DISTORTS THE FACTS OF THIS CASE

A. Brown Never Received A "Loan" Or Any Other Money From Respondents

On June 20, 1988, Petitioner Nattchase Associates Limited Partnership ("Nattchase") purchased from Respondent Sajacito two parcels of property (the "Properties") that Sajacito owned for a price of $45 million. Nattchase paid $9 million in cash at settlement, plus closing costs, and financed the balance of the purchase price with a $36 million deferred purchase money note and deed of trust (the "Nattchase note") provided by Sajacito, which was wholly owned by Respondent San Jacinto. Neither Sajacito or San Jacinto ever forwarded any monies to Nattchase or any of the other Petitioners. Thus, contrary to Respondent's statements in its Brief, Brown did not borrow $36 million from San Jacinto. See Respondent's Brief at 2. This distinction

is important because the underlying issue in this case is the tremendous "loss" caused by Brown's alleged "defalcation."

B. Respondents Never "Auctioned" The Nattchase Note

Next, Respondent states that, "after an auction and bidding process," Respondent RTC sold the Nattchase note to Respondent CMF Loudoun. Respondent's Brief at 3. Respondent's use of the term "auction" is patently deceptive as that term is defined as "a public sale of property to the highest bidder...." Black's Law Dictionary 119 (5th ed. 1979). If an "auction" truly had been held, this lawsuit never would have been filed. Instead, in a sealed bid sale, the RTC excluded Brown who, with an investment of over $20 million in the underlying real estate, clearly had the most incentive to make the highest bid at an auction for the note. Respondent cannot obscure the RTC's wrongful exclusion of Brown from the bidding process by claiming that an "auction" for the note was held.

III. RESPONDENT MISCHARACTERIZES THE BASIS OF BROWN'S CLAIMS

Respondent states, "Petitioners contend that Section 1821(j) [12 U.S.C. §1821(j)] does not apply in this case because the RTC acted outside its statutory authority when it sold the Nattchase loan to CMF...." Respondent's Brief at 7. This is simply a misstatement of the basis of Brown's claims. Brown does not contend that the RTC acted outside its statutory authority when it sold the Nattchase note

to CMF.[1] Instead, Brown contends that the RTC acted outside its statutory authority when it excluded Brown from bidding on the Nattchase note; that is, that the RTC acted beyond its enumerated powers to exclude bidders under 12 U.S.C. §1441a(f), a section entitled "Limitations on certain Corporate activities."[2]

Respondent's obvious ploy is to conceal the RTC's clear violation of §1441a(f) by mischaracterizing Brown's claim as a challenge to the RTC's power to transfer assets. Respondent hopes to convince this Court that this is merely another case of a party claiming that the RTC improperly exercised one of its statutory powers. Respondent, however, cannot "pigeonhole" Brown's claim within §1821(j). The RTC took actions which it had no authority to take,

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[1] Note again Respondent's use of the term "loan" to imply that Brown was actually loaned money by Sajacito or San Jacinto. As stated above, none of the respondents ever advanced any monies to Brown.

[2] Respondent concedes that 12 U.S.C. §1821(j), the anti-injunction provision, only protects the RTC from being subjected to suits for injunctive relief where the RTC acts within its statutory authority. Respondent's Brief at 7. See Gross v. Bell Savings Bank, 974 F.2d 403, 407 (3d Cir. 1992) (Federal courts have the ability to restrain the RTC where it is acting outside its statutory powers.); Cummings Properties Management v. FDIC, 786 F.Supp. 144, 145 (D.Mass. 1992) (§1821(j) does not prevent a court from adjudicating whether a particular act is within the powers of the RTC.) Respondent asserts that several other statutory provisions give the RTC broad discretion in determining how, and to whom, to dispose of assets. Respondent's Brief at 8, n.4. Respondent's reliance on these provisions is unavailing as none of the cited provisions deal even indirectly with the RTC's authority to exclude potential bidders which, of course, §1441a(f)(1) addresses directly.

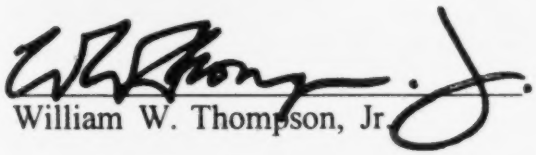
i.e., the exclusion of Brown from bidding on the Nattchase note. Consequently, §1821(j) does not apply and the District Court should have enjoined the RTC from acting outside the sphere of its statutory authority, or declared its bidding procedures and exclusion of Brown to be illegal, null and void.

This is a case of first impression involving extremely important questions of federal and Constitutional law which this Court should settle. Respondent notes that this Court has declined three previous invitations to consider the scope of §1821(j). Respondent's Brief at 8, n. 3. See National Trust for Historic Preservation v. FDIC, No. 94-317 (Dec. 12, 1994); Joint Venture v. Onion, 112 S.Ct. 933 (1992); Rosa v. RTC, 112 S.Ct. 582 (1991). This case, however, is unlike any of those in that none involved even an allegation that the RTC (or FDIC) acted outside the scope of its statutory authority. Here, Respondent concedes that §1821(j) protects the RTC from injunctive relief only where it acts within its statutory authority, and Brown has conclusively demonstrated that the RTC in fact acted outside that authority. This case thus presents this Court with an opportunity to establish a bright line which not even the RTC can cross.

IV. CONCLUSION

For the reasons set forth above and in Brown's Petition For Writ Of Certiorari, Brown respectfully requests that this Court grant his Petition.

Respectfully submitted,



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